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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of

Implementation of the Non-Accounting  
Safeguards of Sections 271 and 272 of the  
Communications Act of 1934, as amended

CC Docket No. 96-149

FURTHER COMMENTS OF TELEPORT COMMUNICATIONS GROUP INC.

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### **SUMMARY**

The Commission concluded in the Order issued in this proceeding that compliance with section 272(e)(1) of the Act can be best assured if the service provisioning activities of regional Bell Operating Companies ("RBOCs") are monitored through the use of reporting requirements. Now, final determinations must be made as to the reporting format and practices. Teleport Communications Group Inc. ("TCG") urges the Commission to adopt reporting categories in accordance with the statutory requirement that RBOCs provide both telephone exchange service and exchange access in a time period that is no longer than that in which it would provide requested service to itself or its affiliates. The reporting requirements described herein provide the only objective way for interconnecting carriers to monitor the RBOCs' behavior. Without such a requirement, competitors will be hampered in substantiating any valid claims of discriminatory treatment.

The service intervals and categories proposed by TCG for telephone exchange service and AT&T for exchange access provide the basic reporting requirements necessary to ensure that the provisioning requests of unaffiliated entities in accordance with Section 272(e)(1). Although the RBOCs have generally objected to any reporting requirements beyond those established in the Computer III and ONA proceedings, those reports do not provide information that is appropriate for monitoring requests associated with RBOC and CLEC

interconnection arrangements. The time periods and service categories established for ONA reporting requirements are not useful in assessing nondiscriminatory provisioning of telephone exchange service and exchange access. Thus, TCG's proposal, which conforms with the statute and with the Commission's findings regarding the value of reporting requirements in ensuring compliance with the statute, should be adopted.

The Commission has tentatively concluded, however, that the service intervals included in TCG's proposal, related to telephone exchange service requirements, are distinguishable from other RBOC service intervals and, therefore, are beyond the scope of this proceeding. Yet, the plain language of section 272(e)(1) requires nondiscriminatory service for any request related to telephone exchange service or exchange access. TCG's submits that its proposal is appropriate in the context of this proceeding, for it is intended to ensure the non-discriminatory provisioning of telephone exchange service as required by section 272(e)(1).

Finally, reporting requirements will not fulfill their intended purpose of ensuring compliance with the *nondiscrimination requirement* unless the information is kept separately with regard to the service the RBOC provides to itself and any affiliates. This information must be provided on a disaggregated, exchange area-by-exchange area basis. Otherwise, the ability to average service intervals on an

company-wide or state-wide basis may distort information when compared to service provided to CLECs. These reports are necessary to enable competitors to monitor the service they receive from RBOCs, and are the only means by which objective information will be able to do so.

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Communications Act of 1934, as amended	)	
	)	

**FURTHER COMMENTS**

Teleport Communications Group Inc. ("TCG") hereby submits its Comments in response to the Commission's Further Notice of Proposed Rulemaking ("FNPRM") in the captioned proceeding.

**I. INTRODUCTION**

Congress recognized that once regional Bell Operating Companies ("RBOCs") are providing in-region, interLATA service, certain protections must be imposed so that competition in these markets will still have an opportunity to flourish. The most notable of these protections is the requirement that such service be provided through a separate affiliate for a period of three years once an RBOC's application to provide such service has been approved.<sup>1/</sup> However, Congress imposed additional protections under section 272(e), which, unlike the separate affiliate requirement, will not sunset after three years. These protections must be diligently

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<sup>1/</sup> 47 U.S.C. § 272(a).

maintained by the Commission's implementing rules as the lasting check on discriminatory behavior by RBOCs. By this FNPRM, the Commission is undertaking to establish certain reporting procedures for monitoring RBOC and affiliate compliance with the nondiscriminatory standard set by section 272(e)(1) for the provisioning of telephone exchange service and exchange access to an unaffiliated entity.

The Commission has concluded in the first Order issued in this proceeding that compliance with section 272(e)(1) can be best assured if RBOC activity is monitored through the use of reporting requirements.<sup>2/</sup> Now, final determinations must be made as to the report format and maintenance requirements. Consistent with its prior submissions in this docket, TCG urges the Commission to adopt reporting categories that respond both to the statutory requirement that exchange access services be provided on a nondiscriminatory time interval and that telephone exchange service requests be filed according to the same standard. Therefore, the Commission should adopt the reports proposed by TCG (telephone exchange service components)<sup>3/</sup> and AT&T (exchange access components) in

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<sup>2/</sup> Order at ¶ 243.

<sup>3/</sup> TCG has modified its original reporting format to incorporate additional types of facilities or services that should be monitored. See TCG ex parte (dated October 24, 1996). The need for these revisions became apparent through the course of TCG's experiences in negotiating and arbitrating interconnection agreements with RBOCs. The updated proposal is attached hereto.

order to compile information that is necessary for monitoring compliance with section 272(e)(1) in its entirety.

The reporting formats proposed by TCG and AT&T provide the only practical way for parties requesting telephone exchange service and exchange access from the RBOC to monitor whether the provision of such services meet the nondiscriminatory standard set forth in section 272(e)(1). The intervals and service categories set forth in these proposed reporting formats will provide the objective information that carriers need to analyze the quality of the service. From the Commission's perspective, the availability of this information should help the Commission assess complaints based on alleged RBOCs' failure to provide service on a nondiscriminatory basis. Without the information, competitors will be hampered in their efforts to substantiate claims of discriminatory treatment. Therefore, these reports are not only required under the statute, but also provide significant practical benefits to carriers and the Commission.

**II. TCG'S PROPOSAL INCLUDES ONLY THE NECESSARY SERVICE CATEGORIES THAT ARE REQUIRED TO MEASURE OBJECTIVELY RBOC COMPLIANCE WITH SECTION 272(e)(1)**

TCG's proposal focuses on those requests that would be submitted by interconnectors for the provision of telephone exchange service pursuant to section 272(e)(1). The grid requires information relevant to the time for delivery of interconnection service to the RBOC, its affiliates, and competitors. It also requires



information for monitoring the mean time to repair, service availability standards, and performance criteria. These service intervals specifically monitor the provisioning of co-carrier telephone exchange services in a comprehensive, streamlined, and objective manner. TCG has recently updated its original reporting grid to reflect insights gained through its recent experience negotiating and arbitrating interconnection agreements. To the extent that some proposals, including the Commission's, apply only to exchange access, these proposals must be combined with TCG's to implement fully the nondiscriminatory requirements under section 272(e)(1).

**A. The TCG and AT&T Proposals Work in Tandem to Meet the Requirements of Section 272(e)(1)**

As discussed further in Part III, section 272(e)(1) imposes a nondiscriminatory provisioning standard on RBOCs both for telephone exchange service and exchange access service. TCG's proposal focuses on those service intervals related to requests under interconnection arrangements. AT&T's proposal focuses on reporting requirements related to access.<sup>4/</sup> Used in tandem, these reporting requirements will help detect noncompliance using simple, objective reporting standards.

The Commission's proposed format, however, selects only seven of the eleven categories proposed by AT&T to monitor access-related services and

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<sup>4/</sup> AT&T ex parte (dated October 3, 1996).

includes no categories related to the provisioning of telephone exchange access.<sup>5/</sup> This reporting format, therefore, is insufficient for measuring whether the nondiscriminatory provisioning obligations imposed under section 271(e)(1) have been met. Moreover, it is insufficient to ensure the fulfilling of telephone exchange service requests on a nondiscriminatory basis.<sup>6/</sup> In order to provide the only practical means to ensure that the filling of requests from unaffiliated entities for telephone exchange service and exchange access are monitored for compliance with the nondiscriminatory standard, reporting categories must include those services described in TCG's proposal.

TCG has recently added several service categories to its installation and ongoing service performance reports that are crucial for offering telephone exchange service. For example, the proposed reports require objective data on service intervals for requests related to CLEC 911 interconnection trunks and intraLATA presubscription trunks. The Commission proposal, on the other hand, requires no information regarding telephone exchange service, and five of its seven

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<sup>5/</sup> The Commission reports that its proposal addresses only the provision of exchange access to interLATA service providers. FNPRM at ¶¶ 375-76.

<sup>6/</sup> See id. at ¶ 376 (recognizing that the Commission's proposal "is patterned after arrangements regarding the provision of access between interexchange carriers and LECs" and inquiring whether such a proposal sufficiently implements the nondiscriminatory provision of telephone exchange service as required by section 272(e)(1)).

exchange access service categories relate only to dedicated services.<sup>7/</sup> Therefore, TCG's proposal provides the only objective means by which to assess relevant service intervals for service and facilities categories related to telephone exchange service as required under section 272(e)(1).

**B. Reporting Requirements for Service Intervals Under Computer III and ONA Provide Inappropriate Monitoring Information**

Although the RBOCs have generally objected to any reporting requirements beyond those established in the Computer III and ONA proceedings, these service intervals do not provide information that is appropriate for monitoring requests associated with RBOC and CLEC interconnection arrangements. Simply stated, they do not promote the nondiscriminatory provisioning of telephone exchange service as required under section 272(e)(1) because they do not correspond with features of basic ILEC-CLEC interconnection.

ONA provides neither useful units of measurement nor facility categories for monitoring RBOC compliance with section 272(e)(1). Under ONA, RBOCs are required to report four measurements of installation and maintenance service quality: (1) total orders; (2) due dates missed; (3) percentages missed; and (4) average service interval.<sup>8/</sup> However, more useful information is provided if the

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<sup>7/</sup> Only "Time from PIC Change request to implementation" (Category 4) and "Time to restore PIC after trouble incident" (Category 6) address service intervals for switched services.

<sup>8/</sup> Open Network Architecture Plans, 5 FCC Rcd 3084, 3096-97 (1990).

actual time for installations and mean time to repair are measured, rather than reporting intervals related to arbitrarily assigned due dates, or an average service interval that dilutes those egregious intervals of time with more reasonable service provisioning efforts.<sup>9/</sup>

Similarly, the facilities categories for which these measurements must be taken do not correspond with the features of provisioning telephone exchange service.<sup>10/</sup> The ONA reporting requirements divide reporting intervals into two separate categories: installation and maintenance. This information is provided for total of forty-nine service categories applicable to the provisioning of enhanced services.<sup>11/</sup> However, TCG has identified limited types of services or facilities related to the provisioning of telephone exchange service: (1) unbundled loops; (2) CLEC interconnection trunks (inbound and outbound); (3) CLEC 911 interconnection trunks; (4) CLEC gateway interconnection trunks; (5) intraLATA presubscription interconnection trunks; (6) 911 database updates; (7) special access/private line DS3; (8) special access/private line DS1; (9) special

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<sup>9/</sup> See TCG's Modified Proposal, attached hereto.

<sup>10/</sup> See FNPRM at ¶ 375; see also Computer III Remand Proceedings, 6 FCC Rcd 7571, 7602 (1991) ("The nondiscrimination reporting requirements were adopted to protect against possible discrimination against [enhanced service providers] by the BOCs in the quality, and installation and maintenance, of basic services.").

<sup>11/</sup> Computer III, 5 FCC Rcd at 3096, Appendix B.

access/private line DSO; (10) NXX code activation; (11) physical collocation; (12) virtual collocation; (13) resale; and (14) number portability.

These service and facilities categories comprise bare-bones reporting requirements to ensure that the provisioning requests of entities unaffiliated with an RBOC will be fulfilled within a time period no longer than requests made by affiliated entities or the RBOC itself for telephone exchange service. Such reporting requirements will not impose a significant burden on RBOCs because the information requested has been limited to relevant service categories. More importantly, however, they are the service categories required in order to monitor the provisioning of telephone exchange service, which — although required by statute — have been excluded thus far from the Commission's own proposal.

**III. TCG's PROPOSAL REQUIRES REPORTING OF SERVICE INTERVALS THAT ARE APPROPRIATE UNDER THE PLAIN LANGUAGE OF SECTION 272(e)(1)**

TCG has proposed an Interconnection and Collocation Performance Report that would monitor an RBOC's provisioning of co-carrier telephone exchange services. The report is critical in that it requires objective information that describes the RBOCs' performance in providing interconnection facilities to competitors compared to their performance in provisioning their own requests and the requests of affiliates. Therefore, the quarterly filing of such reports provides the only viable mechanism by which to assess whether the RBOCs are treating

interconnecting carriers in a non-discriminatory manner. In the FNPRM, the Commission has noted that TCG's proposal "appears directed toward the implementation of local competition by incumbent LECs" and does not address RBOC service intervals.<sup>12/</sup> TCG disagrees with the Commission's understanding and characterization of its proposal and urges the Commission to consider TCG's proposal as a means of meeting the obligations set forth in section 272(e)(1).

**A. Section 272(e)(1) Requires RBOCs to Fulfill Requests for Telephone Exchange Service by Unaffiliated Entities in a Non-Discriminatory Manner**

Section 272(e)(1) requires an RBOC and any affiliate that is subject to the obligations under section 251(c) (i.e., an incumbent local exchange carrier) to fulfill any request from an unaffiliated entity for telephone exchange service and exchange access within a period of time that is no longer than the time in which it takes to provide the same services to itself or an affiliate. "Telephone exchange service" is defined in the Communications Act as

(A) service within a telephone exchange, or within a connected area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or (b) comparable service provided through a system of switches, transmission equipment, or other facilities (or

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<sup>12/</sup> Having made this determination, the Commission has tentatively concluded that the scope of this rulemaking should be limited to "requirements necessary to implement the service interval requirements of section 272(e)(1)," thereby suggesting that TCG's proposal is outside, in whole or in part, the scope of this proceeding. FNPRM at ¶ 382.

combination thereof) by which a subscriber can originate and terminate a telecommunications service.<sup>13/</sup>

By use of the term "telephone exchange access" in section 272(e)(1), Congress specifically imposed obligations on RBOCs and their affiliates that must comply with section 251(c), the duty to fulfill on a nondiscriminatory basis service requests associated with the offering of telephone exchange service.

Although the Commission has indicated that this is beyond its perception of "service intervals provided by the BOCs," it is clearly what is required by the plain language of the statute. There is no indication that there is any distinction between "telephone exchange service" as used in section 271(e)(1) as compared to "telephone exchange service" as used in section 251(c)(2)(A) regarding interconnection. Thus, the availability of objective reports measuring the provisioning of telephone exchange services to RBOC affiliates as compared to interconnecting CLECs is essential. The Commission has determined that RBOC affiliates may provide local exchange services in addition to interLATA services,<sup>14/</sup> ensuring that RBOCs will have an incentive to favor these entities. The affiliates, which can provide services by resale or through the purchase of unbundled network elements, will be direct competitors with CLECs. Therefore, the service intervals provided by the RBOCs — both for telephone exchange

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<sup>13/</sup> 47 U.S.C. § 153(47).

<sup>14/</sup> Order at ¶¶ 312-16.

service and exchange access service — should be subject to all reporting requirements imposed in the implementation of this provision as the only means by which disparate treatment between RBOC affiliates and CLECs can be objectively assessed.

**B. TCG's Proposal Does Not Confer Additional Rights Upon Unaffiliated Entities that are Not Accorded under the Act**

The Commission tentatively concluded in the NPRM that section 272(e)(1) requires RBOCs to provide nondiscriminatory treatment "in the provision of exchange services or exchange access in terms of timing, but does not create any additional rights beyond those granted to unaffiliated entities through the 1996 Act, pre-existing provisions of the Communications Act, or other Commission rules."<sup>15/</sup> In the Non-Accounting Safeguards Order, the Commission affirmed that unaffiliated entities are not accorded any additional rights to make requests under this provision beyond those granted by the Communications Act or implementing rules.<sup>16/</sup> In this regard, the Commission has expressed its intention not to permit section 272(e)(1) to vest any rights for unaffiliated entities that are not specifically granted under other provisions of the 1996 Act, such as section 251. TCG's proposal is consistent with this sound policy, because it is essential

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<sup>15/</sup> NPRM at ¶ 84; see also Order at ¶ 237.

<sup>16/</sup> Order at ¶ 239.



for implementing the nondiscriminatory standard set forth in section 272(e)(1) with regard to the provisioning of telephone exchange service.

The Commission has tentatively concluded, however, that the service intervals included in TCG's proposal, related to telephone exchange service requirements, are distinguishable from those "service intervals provided by the BOCs,"<sup>17/</sup> and therefore, beyond the scope of this proceeding. The Commission also has noted that TCG has proposed similar service intervals in its Petition for Reconsideration of the Local Competition Order.<sup>18/</sup> Although the Commission declined to adopt the similar reporting requirements for all ILECs in that proceeding,<sup>19/</sup> TCG submits that its proposal should be considered in the instant proceeding. Section 272(e)(1) clearly provides that telephone exchange service (in addition to exchange access) will be provided by the RBOC to unaffiliated entities on a nondiscriminatory basis, and the Commission has already determined that reporting requirements are the appropriate way in which to implement this provision.

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<sup>17/</sup> See FNPRM at ¶ 382.

<sup>18/</sup> Id.

<sup>19/</sup> Local Competition, CC Docket No. 96-98, First Report and Order at ¶ 311.

The plain language of section 272(e)(1) requires nondiscriminatory service — RBOC delivery to an unaffiliated entity of requested service within the same time period as available for the RBOC or its affiliate — for any request, either for telephone exchange service or exchange access. While the Commission has declined to impose reporting requirements for incumbent local exchange carriers in the Local Competition proceeding, it has already determined that such reporting requirements are appropriate for implementation of section 272(e)(1).<sup>20/</sup> The Commission has concluded that reporting requirements will "promote compliance and give aggrieved competitors a basis for seeking a remedy directly from a BOC."<sup>21/</sup> TCG's proposal requires RBOCs to record service intervals for itself, its affiliates, and competitors, and the availability of such information should help ensure the non-discriminatory provisioning of telephone exchange service as required by section 272(e)(1). Although TCG still believes that such reporting requirements would be appropriately applied to all incumbent local exchange carriers in accordance with section 251, in the context of implementing section 272(e)(1), these reporting requirements would apply only to RBOCs. Thus, TCG's proposal is consistent with the Commission's findings regarding the value of

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<sup>20/</sup> Id. at ¶ 242 ("We also conclude that, in order to provide meaningful enforcement of section 272(e)(1), interval response times must be disclosed more frequently than the biennial audit required by section 272(d).").

<sup>21/</sup> Id. at ¶ 243.

reporting requirements in ensuring compliance with the statute and should be adopted in this proceeding.

**IV. AN RBOC MUST KEEP ITS RECORDS AND THOSE OF ITS AFFILIATES ON A DISAGGREGATED BASIS TO PROVIDE THE OBJECTIVE INFORMATION NECESSARY TO MONITOR FOR COMPLIANCE**

The Commission has asked in what level of disaggregated detail must an RBOC keep its own service interval reports.<sup>22/</sup> The reporting requirements will not fulfill their intended purpose of ensuring compliance with the nondiscrimination requirement unless the information is kept separately for the RBOC and any affiliates. This problem is similar to that identified by AT&T with regard to average response times. According to AT&T, monitoring only on the basis of average response times will not satisfy the statutory requirement that requests by unaffiliated carriers be filled within a time period that is "no longer" than a request by the RBOC or its affiliate.<sup>23/</sup> This practice will permit an RBOC to respond quickly to urgent affiliate requests and more slowly to less important requests. In this way, the RBOC can maintain similar average response times for requests by affiliates and unaffiliated entities even though it is better meeting the needs of its

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<sup>22/</sup> FNPRM at ¶ 380.

<sup>23/</sup> AT&T Comments at 36 (dated August 15, 1996).

affiliates.<sup>24/</sup> TCG believes that a similar averaging technique could be used in the context of aggregated results reported for RBOCs and affiliates, which would defeat effective monitoring.

As TCG has reported in this proceeding, Ameritech and Pacific Telesis have submitted applications in several states to obtain local exchange service authority for affiliates that would offer both in-region, interLATA service and competitive local exchange service. By using the competitive affiliate to target those areas subject to competition while continuing to serve all other areas with the dominant local exchange carrier, the RBOC may place a priority on meeting the service requests of the competitive affiliate, even above its own service requests. This practice would have the effect of giving the affiliate an edge over competitors in its service areas but will not harm the regulated RBOC service provider that is not subject to competition. When the service intervals for the competitive affiliate and the regulated RBOC are averaged, the company-wide service intervals would appear to be consistent with the service intervals for unaffiliated entities. However, this practice would obscure the fact that the affiliate would be receiving quicker service than its unaffiliated competitor(s). Such an outcome would be contrary to section 272(e)(1), but this strategy may go undetected if the service interval information is not provided on a disaggregated basis.

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<sup>24/</sup> See id. at ¶ 363 and n.943 (citing AT&T Comments at 36-37).

This same rationale supports TCG's request for service interval information on an exchange area-by-exchange area basis.<sup>25/</sup> Statewide data will average response times for requests and may distort information as it applies to exchange areas that experience varying levels of competition. Although service intervals for the RBOC, its affiliates, and competitors may appear to be congruent, the competitor could be disadvantaged in a more desirable market, while receiving extremely responsive service in less strategic areas. Clearly, a CLEC's need for a timely response may be even that much more pronounced where it is in head-to-head competition with an incumbent for customers. Inconsistent filling of service requests as a competitive strategy may be obscured, however, if better response times for the CLEC in less competitive areas are averaged with unacceptable response times in areas subject to heightened competition.

TCG agrees with the Commission that FCC analysis of these reporting requirements at this disaggregated level is not required for section 272(e)(1) compliance purposes, especially considering the burden this may place on Commission staff.<sup>26/</sup> As long as the information is provided quarterly: (1) with respect to telephone exchange service and exchange access; (2) disaggregated between RBOCs and affiliates; and (3) on an exchange area-by-exchange area

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<sup>25/</sup> See id. at ¶ 380.

<sup>26/</sup> Id. at ¶ 369.

basis, interested parties will have the information necessary to conduct their own analyses and bring any discriminatory behavior to the Commission's attention. Therefore, TCG agrees with the Commission's tentative conclusion that it will be sufficient for RBOCs to certify to the FCC that they are keeping records available for public inspection, but that FCC review is not necessary. However, the Commission may wish to assess whether its review of the reports is necessary if compliance problems arise under this procedure.

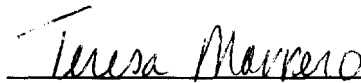
## **V. CONCLUSION**

For these reasons, TCG urges the Commission to adopt TCG's reporting proposal for the purpose of ensuring compliance with section 272(e)(1), which requires the nondiscriminatory provisioning of telephone exchange service to unaffiliated entities by an RBOC or its affiliates. Section 272(e)(1) imposes the same standard for the provisioning of exchange access, and compliance with this requirement can be effectively monitored by the use of AT&T's proposed reporting format. None of the current reporting obligations fulfill the statutory requirements under the 1996 Act, but the intervals and service categories set forth in these proposed reporting formats will provide the objective information that will be necessary for carriers to analyze the quality of the service. Finally, the information for both reports should be made available on a disaggregated, exchange area basis

so that interested parties can analyze the information provided and bring any allegations of discriminatory behavior to the Commission's attention.

Respectfully submitted,

TELEPORT COMMUNICATIONS GROUP INC.

A handwritten signature in cursive script, reading "Teresa Marrero", is written over a horizontal line.

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## INTERCONNECTION AND COLLOCATION PERFORMANCE REPORT

Quarter/Year \_\_\_\_ / \_\_\_\_

Study Group Classification \_\_\_\_\_

*(TCG/RBOC Affiliates/10 Largest Retail Customers/Top 3 IXC's/Major CLECs)*

Type of Facility or Service	Installation Performance								
	Number of Installs/Orders	FOC Response Time of RBOC	Install/Turn-Up Interval (Scheduled)	Percent on Time	Mean Install Time (Actual)	Median Install Time (Actual )	Standard Deviation of Install Time (Actual)	Number of Installs Rescheduled at RBOC Request	# Delayed Due to NXX Jeopardy
Unbundled Loops/ (POTS)									N/A
CLEC Interconnection Trunks - Inbound									N/A
CLEC Interconnection Trunks - Outbound									N/A
CLEC 911 Interconnection Trunks									N/A
CLEC Gateway Interconnection Trunks									N/A
IntraLATA Presubscription Interconnection Trunks									N/A
911 Database Updates									N/A